S.B. CIVIL WRIT PETITION NO.195/2004

SMT. INDER LATA

VS

JODHPUR VIDHYUT

DATE OF ORDER : 18.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr.H.L.Kela, for the petitioner.
Mr.Kuldeep Mathur, for the respondents.

<><><>

Heard learned counsel for the parties.

According to learned counsel for the petitioner,the petitioner's suit was dismissed by the trial court because the petitioner's advocate could not appear when the case was called. The petitioner submitted application in time, but the trial court dismissed the petitioner's application for restoration of the suit on the ground that the grounds submitted by the petitioner for absence of her advocate appears to be not correct. According to learned counsel for the petitioner, the petitioner being lady, she herself was not conducting the case and even if any mistake was committed by her husband while dealing with her advocate a lenient view may be taken otherwise petitioner will suffer

great hardship and will be deprived to protect her money. The petitioner is never seeking permission to put-forward her case.

Learned counsel for the respondent tried to point out that conduct of the petitioner was not just and proper and, therefore, the trial court has not committed any mistake in dismissing the application of the petitioner for restoration of the suit.

I considered the facts of the case and in view of the fact that the petitioner submitted the application without any delay and there may be reason for levelling allegations by the client against her advocate and the advocate of the petitioner has filed the affidavit countering the allegations of the petitioner even then it will be just and proper and will be in the interest of justice to grant opportunity to the petitioner to pursue her remedy in the court of law in the suit.

In view of the above, the writ petition of the petitioner is allowed. The application filed by the petitioner for restoration of the suit is allowed and the suit is restored to its original number on payment of cost of Rs.2,000/- by the petitioner to the respondent-defendant within a period of one month from today. The parties are directed to appear before the trial court on 12th April, 2005. The petitioner shall pay

or deposit the above amount in the time given above and in case, the petitioner will fail to pay or deposit the amount, the suit shall remain dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-